

ADVISORY OPINION 2003-006

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

January 22, 2004

Mr. Walter Aden Hawkins
1027 Fairway Street
Bowling Green, KY 42103

Dear Mr. Hawkins:

This is in response to your December 22, 2003 letter on behalf of KentuckyDems.com requesting an advisory opinion concerning whether a group organized to provide a web site delivering news, commentary and opinion regarding Kentucky politics would be required to report to the Kentucky Registry of Election Finance ("Registry"). You explain that the web site would solicit and publish opinions on issues and policies and would "take strong positions thereon." Further, you state that contributors to the web site may advocate the election or defeat of one candidate over another or of one party over another.

The proposed web site would not be affiliated with the Kentucky Democratic Party, but would accept articles and press releases from elected officials, activists and democratic organizations, including the Kentucky Democratic Party. Specifically, you ask the following questions, the Registry's response to which follows each:

- 1. Based on the description of the proposed web site above, will KentuckyDems.com have a responsibility to report to the Kentucky Registry of Election Finance in any way, including, but not limited to, as a Political Action Committee or Contributing Organization? If so, what is the correct filing status and what particular aspects of the site trigger such requirements?**

Kentucky campaign finance law defines a permanent committee ("PAC") as "a group of individuals, including an association, committee or organization...which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year." KRS 121.015(3)(c). In contrast, a contributing organization is characterized as an organization which contributes to candidates "from time to time from funds derived solely from within the group." KRS 121.015(4). Therefore, a permanent entity organized to expressly advocate the election or defeat of clearly identified Democratic candidates and the Democratic Party, which intends to accept funds from outside the group (i.e. in exchange for advertising) would constitute a permanent committee.

As you describe your proposed organization, it would appear that it would fall within the definition of a permanent committee. KRS 121.170 requires the registration of permanent committees. KRS 121.180(6) provides the reporting responsibilities of a permanent committee.

- 2. Would the founders of KentuckyDems.com be precluded from forming a limited liability corporation or other corporation solely for the purpose of operating a web site in a manner consistent with the above description?**

Under the Kentucky Constitution § 15 and KRS 121.025 and KRS 121.035, a corporation of any form is strictly prohibited from contributing, directly or indirectly, any thing of value toward the nomination or election of any Kentucky candidate. Therefore, if you choose to form a corporation, the web site you propose would be unlawful. However, limited liability companies (LLCs) are not corporations under Kentucky law. Therefore, the conduct you propose under the LLC form would not fall within the Kentucky campaign finance provisions prohibiting corporate contributions.

- 3. Would accepting paid advertisements for display on the site to defray the costs of publication be precluded by applicable election or campaign finance laws?**

KRS 121.015(6) defines a contribution as any "payment, distribution, loan, deposit, or gift of money or other thing of value to ... a committee." Therefore, the payment to a

permanent committee for advertising space on its web site would constitute a contribution from the payor to the permanent committee, and the permanent committee would be required to report the contribution to the Registry. However, nothing would preclude a permanent committee from accepting such a contribution or providing advertising, provided the contribution did not exceed the contribution limit of \$1,500 provided under KRS 121.150(10).

4. Are there any other campaign finance related issues of which we should be aware?

This advisory opinion addresses the applicability of only KRS Chapters 121 and 121A to your questions. You are advised to consult the Federal Election Commission (FEC) and Internal Revenue Service (IRS) for information concerning the applicability of federal campaign finance and tax law regarding political organizations such as the one you propose.

This advisory opinion represents the Registry's consideration of the circumstances presented in your letter. If you have any further questions, please do not hesitate to contact the Registry's staff.

Sincerely,

Rosemary F. Center
General Counsel

RFC/jh

Cc: Registry Members

Sarah M. Jackson
Executive Director